

Remarks

Claims 1, 4, 5, 8-12 and 15-20 are currently of record in the present application. All claims have been rejected by the Examiner.

The Applicant respectfully traverses these rejections for the reasons set out hereinbelow.

Rejection under 35 USC § 112

The Examiner has rejected Claims 1, 4-5, 8-12 and 15 to 20 under 35 USC 112, first paragraph, for failing to comply with the written description requirement. In particular, the Examiner has objected to the limitation that the retaining member is normally biased to the closed position.

First, it is noted that this language was introduced into Claim 1 in the Office Action response of February 17, 2005. Since that time, several Office Actions have been issued, and several responses have been filed. However, heretofore, this objection has not been raised. Further, it is noted that a suggested claim from the Examiner also included this language. While not determinative of the allowability of this amendment, the Applicant reminds the Examiner that these objections should be raised immediately, and not after more than 18 months review.

Second, it is noted that this objection is raised under the first paragraph of Section 112. While the retaining member is preferably automatically moved to closed position, and a device which is normally biased to the closed position is one option, this is not essential to the operability of the invention. As long as the retaining member remains in the closed position, once it has moved to that position, the device is operable. As such, the objection under 35 USC 112 first paragraph is unfounded.

Third, it is believed that the use of the phrase “normally biased” is well supported by the application as originally filed. Clearly, all of the figures show an embodiment where the retaining member would slide to the closed position by the force of gravity, assuming the retaining member could freely slide. If it could not freely slide, the device user merely needs to move the retaining member to the closed position. This option is now covered by the presently amended claim.

As such, while this rejection is traversed, the Applicant has amended Claim 1 to remove the phrase “normally biased”. It is clearly supported, however, in the application as originally found that the retaining member can be moved from a closed to an open position. Further, it is clearly described in the application, how the invention works so that the skilled artisan would have no difficulty in understanding the present invention, or for putting the invention into practise. See for example the section on page 3, lines 15 to 27.

Further, the best mode of the invention has clearly been described and is clearly shown in the figures. For example, Figures 1 to 3 show the best mode of the invention as contemplated by the Applicant. All the skilled artisan needs to do to put the invention into practise is to copy the figures as shown.

Further, on page 1, lines 24 to 26, it is stated that “the retaining member is movable between a substantially closed position in which upward vertical movement of the rod portion is inhibited, and an open position in which upward vertical movement is substantially uninhibited”. As such, the language now present in the claims is fully supported by the text of the application as originally filed.

With this amendment, the Applicant contends that the rejection under 35 USC § 112, first paragraph, should be withdrawn.

Rejection Under 35 USC § 102

Claims 1, 4, 8, 10, 16, 17, 19 and 20 currently stand rejected under 35 USC 102(b) as being anticipated by US Patent No. 4161839 (hereinafter “Ward”). The Applicant respectfully traverses this rejection.

First it must be noted that the device of Ward bears no resemblance to the device of the present invention, and only by misinterpreting the scope of the present claims can an anticipation argument be raised. The device of the present invention is meant as a device which can be attached to a boat or stuck in the ground, and does not require anything, such as clamp “A” to be essentially fixed to the fishing rod itself.

Further, there is no mechanism to hold the trunnions 6 and 7 of clamp A to be easily, and accidentally removed from clevis “E” merely by pulling clamp A straight up.

Also, the fisher wishing to use this device must first attach clamp A to the rod in such a manner that it must be put in place prior to the insertion of the fishing line on the rod. Otherwise, clamp A would cover and interfere with the movement of the fishing line. This is in contrast with the present invention in which any fishing rod can be easily inserted into the restriction member and held in place with a retaining member; neither of which must be clamped onto the rod section of the fishing rod.

Further the Examiner claims that restriction member at 8-9 is a vertically elongated member. This is an overstatement of the facts. Sides 8 and 9 are merely a square shaped sides, and do not provide an elongated member. Further, while sides 8 and 9 might include a vertical opening, the rod *per se*, is not inserted into this opening as required by the claim. In contrast, only trunnions 6 and 7 from clamp A are inserted into these openings.

Claim 1 of the present invention requires a “substantially vertical, elongated member having a vertical, longitudinal axis, and a vertical opening from one end of said member, which vertical opening extends substantially along said vertical axis and is configured to receive a rod portion of a fishing rod”. Respectfully, the Applicant contends that none of these features are provided in the Ward device, and it is an overstatement of the teachings of Ward to suggest otherwise.

While the Examiner is entitled to broadly consider the interpretation of the claims, the attempt to construe the Ward device as falling within the scope of the present claim is not supported by a fair and reasonable reading of the claim with a mind willing to understand the meaning of the claim.

Also, it is noted that the vertical openings do not inhibit the movement of the rod. It is only because trunnions 6 and 7 from clamp A are present in the slot that the rod is prevented from rotation.

Next, the vertical openings are merely slots, and do not provide a substantially tapered opening. While the vertical openings may have a curved opening, this is only to facilitate insertion of the trunnions into the slots, and not to hold the rod, *per se*, in the

restriction member. Again, the vertical openings are merely to hold the trunnions and not the rod portion of the fishing rod.

Additionally, trunnions 6 and 7 are used to hold clamp A within the slots. They are not guideposts in the fashion used in the present invention wherein the guideposts are used to hold the restriction member to the retaining member. Instead, the trunnions are used to hold clamp A within slots 10 and 11.

A further fault in the Examiner's position is that Ward does not provide a horizontal opening in the restriction member. The "horizontal opening" at the area "proximate 7 in Figure 3", as referenced by the Examiner, is merely a view of slots 10 and 11. Trunnions 6 and 7 merely move straight upwards. There is nothing to suggest that trunnions 6 and 7 move anything other than straight upwards. There is no suggestion of a horizontal opening, and there is no suggestion that trunnions 6 and 7 move in a horizontal fashion.

Next, the device of Ward does not attempt to hold trunnions 6 and 7 within slots 10 and 11, other than the fact that they fall within the slots. However, there is no restriction member that holds them in place in that position. The Examiner comments that Ward provides a restriction member that blocks the horizontal opening. This cannot be true since, first there is no horizontal opening in the restriction member, and second, there is no cover that restricts access to the restriction member. The trunnions 6 and 7 merely move up and down within slots 10 and 11. There is no attempt by Ward to close the slots and thus hold trunnions 6 and 7 within slots 10 and 11 until a retaining member is moved to an open position.

Further, in Ward's device, the upward movement of the fishing rod merely removes clamp A from clevis E. In contrast, the upward movement of the fishing rod in the present invention removes the rod from the support device. Claim 1 has been amended in order to clearly state that the fishing rod is removed from the support. In the Ward device, one part of his device is removed from the second. This clearly differentiates the present invention from the current invention since the fishing rod is never, in use, removed completely from the support device.

Thus, there are numerous differences in the structure of the Ward device, and the device of the present invention. As such, the Ward device cannot anticipate the present device. Again, the Ward device is intended to be a two piece device; one of which is essentially fixed to the fishing rod (during use). One part of the support is moved straight upwards to remove it from the other. There is no suggestion or need for the Ward device to be moved in a horizontal direction, through a horizontal opening.

In contrast, the device of the present invention does not require anything to be fixed to the fishing rod, and allows the fishing rod to be easily completely removed from the support. However, the device of the present invention requires the fishing rod to be removed from the support by a vertical movement followed by a horizontal movement through a horizontal opening. These features are not found in the Ward device.

In view of these numerous differences between the Ward device and the device of the present invention, the Applicant contends that the Ward device clearly does not anticipate the present invention. As such, the objection to Claim 1, under 35 USC 102, must be withdrawn.

As to Claim 4, item D of the Ward device is only a small component of the total structure. The fact that it is circular, does not mean that the retaining member is tubular. Further, Claim 4 is dependent on allowable Claim 1, and thus is also allowable.

In respect of Claim 8, it is noted Ward provides a pole for insertion into the ground. This is not a ground engager of the type described and claimed in the present invention. Again, though, Claim 8 is dependent on allowable Claim 1, and thus is also allowable.

As to Claims 10, it is noted that Ward provide a mount.

In respect of Claim 16, Ward does not provide a horizontal opening, and thus cannot provide a horizontal opening having the configuration described and claimed in the present application. There is nothing in the Ward structure that requires the fishing rod to be moved upwards and outwards. Ward merely pulls up on the fishing rod since there is no horizontal opening which requires an outward movement of the fishing rod. As such, Claim 16 is clearly not anticipated.

As to Claim 17, Ward teaches the use of trunnions to hold clamp A within the slots 10 and 11. These trunnions do not provide the same function as the guideposts of the present invention which are adapted to allow the retaining member to slide up and down without releasing the retaining member from the restriction member.

As to Claim 19, it is noted that this claim is dependent on allowable Claim 1, and thus is also allowable. However, it is again noted that slots 10 and 11, on the two sides, do not provide a “substantially vertical, elongated member having a vertical, longitudinal axis, and a vertical opening from one end of said member, which vertical opening extends substantially along said vertical axis and is configured to receive a rod portion of a fishing rod”.

As to Claim 20, there is no horizontal opening in the Ward device, and as such, Claim 20 cannot be anticipated by the Ward disclosure.

In view of these comments, and the amendments made to the Claims, the rejection of the Claims under 35 USC 102(b) must be withdrawn.

Rejection Under 35 USC § 103

Claim 5 currently stand rejected under 35 USC 103(a) as being obvious over Ward in view of US 4827654 (hereinafter “Roberts”).

As noted hereinabove, there are numerous differences between the Ward device and the device of the present invention. The addition of the Roberts device does not provide all of the features missing from the Ward device. Further Roberts merely provides a tubular structure in which a handle section of a fishing rod is set. In combination with Ward, the Roberts device would not lead the skilled artisan to the present invention. Also, since Claim 1 is allowable, Claim 9 which is dependent on Claim 1, is also allowable.

Claim 9 also stands rejected as being obvious over Ward in view of US Patent No. 4656774 (hereinafter “Terrill”). It is noted that Terrill provides an auger as the ground engager. However, the combination of Ward and Terrill would not lead the

skilled artisan to the present invention as currently claimed. Also, since Claim 1 is allowable, Claim 9 which is dependent on Claim 1, is also allowable.

Claims 11 and 12 also stand rejected as being obvious over Ward in view of Roberts. However, again, given the numerous differences between the Ward device and the present invention, the Applicant contends that the combination of these documents would not lead the skilled artisan to the present invention. Also, since Claim 1 is allowable, Claims 11 and 12 which are dependent on Claim 1, are also allowable.

Claim 15 also stands rejected as being obvious over Ward. However, as previously stated, in view of the numerous differences between the Ward device and the device of the present invention, the Applicant contends that Claim 1 is allowable. Also, since Claim 1 is allowable, Claim 15 which is dependent on Claim 1, is also allowable.

Claim 18 also stands rejected as being obvious over Ward in view of Roberts. However, as previously stated, in view of the numerous differences between the Ward device and the device of the present invention, the Applicant contends that Claim 1 is allowable. Further, while Roberts provides an opening having a curved structure, this is a vertical opening, and is only provided so as to permit easy access to the fishing rod handle. It performs no function with respect to the method of removal of the rod from the rod support. Further, since Claim 1 is allowable, Claim 18 which is dependent on Claim 1, is also allowable.

Thus, in view of the numerous differences between the present invention and the Ward device, and in view of the fact that none of the additional prior art provides any suggestion to modify the Ward device in the fashion taught in the present invention, the Applicant contends that the present invention is not obvious. As such, the rejection under 35 USC 103 should be withdrawn.

Summary

By the amendments described hereinabove, it is contended that the objections to the claims under 35 USC § 102 and 103, in addition to the objection under 35 USC 112, have been obviated. Accordingly, it is believed that the present set of claims is now in condition for allowance.

As a result, favourable reconsideration of this application is now respectfully requested.

However, if necessary, the Examiner is requested to contact the undersigned by telephone should any remaining issues need to be addressed.

Respectfully submitted,
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